Oversight Division
Committee On Legislative Research

SUNSET REVIEW

RESIDENTIAL TREATMENT CENTER
TAX CREDIT
Section 135.1150, RSMo

Sunset Review

RESIDENTIAL TREATMENT AGENCY TAX CREDIT
Section 135.1150, RSMo

Prepared for the Committee on Legislative Research
by the Oversight Division

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Committee on Legislative Research
Oversight Subcommittee

THE COMMITTEE ON LEGISLATIVE RESEARCH, Oversight Division, is an agency of the Missouri General Assembly as established in Chapter 23 of the Revised Statutes of Missouri. The programs and activities of the State of Missouri cost approximately $24.0 billion annually. Each year the General Assembly enacts laws which add to, delete or change these programs. To meet the demands for more responsive and cost effective state government, legislators need to receive information regarding the status of the programs which they have created and the expenditure of funds which they have authorized. The work of the Oversight Division provides the General Assembly with a means to evaluate state agencies and state programs.

THE COMMITTEE ON LEGISLATIVE RESEARCH is a permanent joint committee of the Missouri General Assembly comprised of the chairman of the Senate Appropriations Committee and nine other members of the Senate and the chairman of the House Budget Committee and nine other members of the House of Representatives. The Senate members are appointed by the President Pro Tem of the Senate and the House members are appointed by the Speaker of the House of Representatives. No more than six members from the House and six members from the Senate may be of the same political party.

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Members of the General Assembly:

The Joint Committee on Legislative Research is required by Section 23.259 (1) (2) to conduct a performance evaluation of the Residential Treatment Agency Tax Credit , RSMo 135.1150, to determine and evaluate program performance in accordance with program objectives, responsibilities, and duties as set forth by statute or regulation.

The report includes Oversight's comments on (1) the sunset, continuation, or reorganization of the program, and on the need for the performance of the functions of the program; (2) the duplication of program functions; (3) the appropriation levels for each program for which sunset or reorganization is recommended; and (4) drafts of legislation necessary to carry out the committee's recommendations pursuant to (1) and (2) above.

We hope this information is helpful and can be used in a constructive manner for the betterment of the state program to which it relates. You may request a copy of the report from the Oversight Division by calling 751-4143.

Respectfully,

Representative Tom Flanigan
Chairman

EXECUTIVE SUMMARY

The Residential Treatment Agency Tax Credit program allows a tax credit for persons who make donations to local residential treatment agencies. The credit is for fifty percent of the value of the donation. The program has an annual limit of forty percent of the total funds received from the Department of Social Services in the preceding twelve months that must be apportioned among all applicants. The program is set to expire on August 28, 2012.

The utilization of this program has grown steadily since its inception; $214,901 credits redeemed in 2008 up to $323,384 in 2011. The average amount of credit authorized per certificates issued has been approximately $3,217, and is used mostly by taxpayers filing Individual income tax returns.

Oversight was unable to determine if the program generates additional donations or simply gives taxpayers an additional break for donations that they would have made regardless. Therefore, Oversight is unable to determine if the original intent of the legislation (generation of additional donations to local residential treatment agency) has been achieved.

At the December 15, 2011 Joint Committee on Legislative Research quarterly meeting a motion was adopted stating "that while the committee feels the information in the report is factually accurate, the committee believes that the debate on sunsets in general, including those credits in this report specifically, should be continued in the General Assembly at large and this motion does not recommend extension or termination of any tax credit contained herein."

Chapter 1

Purpose

The General Assembly has provided by law that the Joint Committee on Legislative Research will conduct a performance evaluation of a program subject to the Missouri Sunset Act. The committee shall consider the criteria as listed in Section 23.268, RSMo in determining whether a public need exists for the continuation of a program, or for the performance of the functions of the program. A sunset review is the regular assessment of the continuing need for a state program to exist. A sunset review answers the basic questions of what has happened to this program since its inception and does the State of Missouri continue to "need" the services provided by the program.

The Joint Committee on Legislative Research directed the Oversight Division to conduct a Sunset Review of the Missouri Department of Social Services Residential Treatment Agency Tax Credit Program, Sec. 135.1150, RSMo. This report provides an update on the Residential Treatment Agency Tax Credit Program as created by HCS for SCS for Senate Bill 614 in the 2006 legislative session and fulfills the requirement as established by Section 23.268, RSMo.

Oversight's review addressed, but was not limited to the following:

1. Compiling all data related to the program since its inception;
2. Analysis of the events and changes to the program since its inception in 2007.

Scope

The Oversight Division researched the laws and activity regarding the Residential Treatment Agency Tax Credit Program from 2007 through 2010. Analysis included a review of Department of Social Services and Department of Revenue data related to the program.

Methodology

The Oversight Division obtained information on the Residential Treatment Agency Tax Credit Program through review of statutes, letter correspondence with the Missouri Department of Revenue (DOR) and the Missouri Department of Social Services (DOS), and interviews with DOR and DOS staff who work directly with the program.

Background

House Committee Substitute for Senate Committee Substitute for Senate Bill 614 from the 2006 legislative session created the Residential Treatment Agency Tax Credit and stipulated that the program automatically sunset six years from its effective date. The program is set to expire on August 28, 2012.

The residential treatment agency tax credit helps fund direct services for children in residential treatment and offers a tax credit of up to 50% of the donation to apply toward the donors state tax liability. Of that donation, the agency keeps 50%, and it writes a check to the state for the other 50%. There is no cost to the state for the tax credit.

Residential treatment is care necessary for children who are status offenders or have emotional or psychological difficulties caused by abuse or neglect.

A qualified residential treatment agency is licensed by the Department of Health and Senior Services; accredited by the Council on Accreditation, the Joint Commission on Accreditation of Healthcare Organizations or the Commission on Accreditation of Rehabilitation Facilities; and is under contract with the Department of Social Services to provide treatment services for children who are residents or wards of residents of the state of Missouri.

This tax credit can be claimed by a person, firm, partner in a firm, corporation, or a shareholder in an S corporation doing business in the state of Missouri and subject to the state income tax imposed in Chapter 143 RSMo. It can also be claimed by a corporation subject to the annual corporation franchise tax imposed in Chapter 147 RSMo.; any charitable organization that is exempt from federal income tax and whose Missouri unrelated business taxable income, if any, would be subject to the state income tax imposed under Chapter 143; an insurance company paying an annual tax on its gross premium receipts in this state; any other financial institution paying taxes to the state of Missouri or any political subdivision under Chapter 148; an express company who pays an annual tax on its gross receipts pursuant to Chapter 153; or an individual subject to the state income tax imposed in Chapter 143.

The amount of the claimed tax credit may not exceed the amount of the taxpayer's state income tax liability for the year the credit is being claimed. Any tax credit that cannot be claimed in the tax year associated with the contribution may be carried forward and used against a taxpayer's state tax liability for four subsequent years. Also, the owner of the tax credit may assign, transfer, sell, or otherwise convey the certificate. The new owner will have the same rights as the original owner. When a certificate is assigned, transferred, sold, or otherwise conveyed a notarized DOS tax credit transfer form must be submitted to DOS within 30 days after the transaction. The amount of credits available to each qualifying residential center cannot exceed 40% of the total payments made by DOS in the preceding 12 months.

Eligible donations include cash, publicly traded stocks and bonds and real estate received by a qualified residential treatment agency from a taxpayer. The sole use of these contributions must be direct care services to children who are residents or wards of residents of Missouri.

Donations other than cash require verifying documentation submitted along with the taxpayers' tax credit application.

Since the inception of the program (passed in 2006 and effective for all tax years beginning on or after January 1, 2007), a total of $1,528,940 in credits have been redeemed by Missouri taxpayers. Table 1 below provides details regarding the program since its passage in 2006.

Table 1: Activity of the Residential Treatment Agency Tax Credit Program since its inception:

Fiscal Year	Certificates Issued	Amount Authorized	Amount Redeemed	Average Credit Authorized
2007	5	$31,500	$0	$6,300
2008	150	$530,910	$214,901	$3,539
2009	174	$675,877	$438,814	$3,884
2010	141	$402,669	$551,841	$2,856
2011	93	$170,269	$323,384	$1,831
Total	563	$1,811,225	$1,528,940	$3,217

Source: Department of Social Services

The majority of tax credit claims were claimed against individual income tax. Table 2 below provides a breakdown of the redemptions since the credits inception.

Table 2: Credits utilized by taxpayer type:

Fiscal Year	Corporate Income Redemptions	Financial Institutions Redemptions	Corporate Franchise Redemptions	Individual Income Redemptions	Total Redemptions
2007	$0	$0	$0	$0	$0
2008	$10,880	$0	$2,120	$201,901	$214,901
2009	$12,500	$0	$12,500	$177,900	$202,900*
2010	$28,789	$0	$13,680	$509,372	$551,841
2011	$0	$0	$0	$323,384	$323,384

***The $235,914 difference compared to Table 1 is not available for breakdown.**

Source: Department of Revenue

DOR provided a redemptions-by-county breakout of the FY 2011 activity in the program. St. Louis County had the largest volume of redemptions (19) as well as the greatest total amount of tax credits redeemed ($83,318). Counties with eight or fewer claims are grouped together as "other".

Table 3: Redemptions-by-county in FY 2011:

County	Number of Redemptions	Residential Treatment Tax Credit Redemption Totals	Average Credit Redeemed
Greene	13	$14,337	$1,103
St. Louis County	19	$83,318	$4,385
Other*	63	$225,729	$3,583
Total	95	$323,384	$3,404

***Counties with eight or fewer claims are grouped together as "other".**

Source: Department of Revenue

For the Residential Treatment Agency Tax Credit, individuals and businesses claiming the credit must attach a copy of the tax credit certificate received from the Department of Social Services to a completed Miscellaneous Income Tax Credits Form (MO-TC), and attach those documents to the applicable Missouri tax return (See attached MO-TC form and tax credit certificate). Additionally, the Department of Social Services enters the tax credit information for each tax credit recipient in the CMS system, including the name of the recipient and the dollar amount authorized. When the Department of Revenue (DOR) receives the credit claim, DOR compares the amount claimed on the MO-TC to the available amount shown in the CMS system, and that the claimant was issued a valid tax credit certificate. If the amount claimed does not exceed the amount available in the CMS system, or the amount of the tax liability, the credit is redeemed as requested. The redemption of the credit requires two separate steps, the amount redeemed must be entered in the CMS system and in the tax processing system used to process the taxpayer's return.

Chapter 2

Criteria

The following questions required by Section 23.268 RSMo were considered and addressed by Oversight:

1) Is the Residential Treatment Agency Tax Credit operating efficiently?

The Residential Treatment Agency Tax Credit allows a donor to give to a qualified agency (residential treatment agency under contract with the State of Missouri). Of that donation, the agency keeps 50%, and it writes a check to the state for the other 50%. The donor gets a tax credit in the amount of 50% of their donation. There is no cost to the state for the tax credit.

Based on the information received, within the scope of Oversight's review, the Residential Treatment Agency Tax Credit Program operates efficiently.

2) Identify the objectives intended for the program and the problem or need that the program was intended to address, the extent to which the objectives have been achieved, and any activities of the agency in addition to those granted by statute and the authority for such activities.

According to the Department of Social Services, this tax credit was designed to help agencies fill the gap between the reimbursement rate and the cost of providing treatment. The credit is not widely utilized by all residential treatment agencies. The agencies that do use the tax credit do so consistently.

3) Complete an assessment of less restrictive or alternative methods of performing any rule or regulation that the agency performs that could adequately protect the public.

The Department of Revenue has not completed an assessment to determine less restrictive or alternative methods in relation to this program.

According to the Department of Social Services, another way to help the residential treatment providers would be to increase the compensation rate offered in contract which would require an increase in appropriations or a decrease in the number of children served. The tax credit allows donors to target their donations toward specific agencies.

4) Review the extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies.

The Department of Social Services contracts with Residential Treatment agencies to provide services to children, verifies contributions are made to qualifying agencies, and issues the tax credits.

The Department of Revenue is required to redeem tax credits claimed against taxes imposed in Chapters 143, 147, 148, and 153, RSMo.

These responsibilities and actions are not duplicative.

5) Has the agency made recommendations to the General Assembly asking for statutory changes calculated to be of benefit to the public rather than to an occupation, business, or institution that the agency regulates?

Neither the Department of Revenue nor the Department of Social Services have requested statutory changes to the Residential Treatment Agency Tax Credit.

6) What is the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the program?

The Department of Revenue is not aware of any complaints.

According to the Department of Social Services (DOS), the Department rarely receives complaints about tax credits. DOS works to be proactive in helping both the agencies and donors maximize the benefit they receive from the Residential Treatment Agency Tax Credit before they submit an application. DOS works to ensure information about the credits is readily available and easily understood. Information of the DOS web site helps explain the program and helps the public understand what to expect when they apply to use the credit.

7) What was the extent to which the agency has encouraged participation by the public in making rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the program?

The Department of Revenue provides information in tax booklets and on its web site. No rules have been promulgated by the Department of Revenue regarding this program.

The Department of Social Services wrote the rules to regulate the Residential Treatment Agency Tax Credit based on the legislation authorizing the credit. Much of the language mirrors statute.

8) What is the extent to which the agency has complied with applicable requirements of an agency of the United States or this state regarding equality of employment opportunity and the rights and privacy of individuals?

The Department of Revenue complies with laws regarding employment opportunity and privacy.

The Department of Social Services (DOS) has protected the privacy of all tax payers who utilize the Residential Treatment Agency Tax Credit. DOS exercises equality of employment opportunity through the utilization of the State Merit System, and the people who work with the tax credit within the Department fall under the rules of the Merit System.

9) What is the extent to which the agency has complied with applicable requirements of state law and applicable rules of any state agency regarding purchasing goals and programs for historically underutilized businesses?

The Department of Revenue complies with purchasing rules of this state. The Department of Social Services state this program requires no purchasing.

10) What is the extent to which changes are necessary in the enabling statutes of the program so that the agency can adequately comply with the criteria established in this section?

See the recommendations section of this report, page 9.

11) What is the extent to which the agency issues and enforces rules relating to potential conflicts of interests of its employees?

The Department of Revenue has issued and enforces an internal policy prohibiting conflicts of interest. No rule has been formally promulgated.

All employees of the Department of Social Services are subject to the policy for professional conduct.

12) What is the extent to which the agency complies with Chapter 610, RSMo, and follows records management practices that enable the agency to respond efficiently to requires for public information?

The Department of Revenue complies with Chapter 610, RSMo, requests.

The Department of Social Services (DOS) works with its Communications Director and Special Counsel for Administration to be responsive to all requests for public information regarding tax credits. The information available on the DOS web site helps answer many of the public requests.

13) What is the effect of federal intervention or loss of federal funds if the program is sunset?

This is not applicable as the Residential Treatment Agency Tax Credit Program does not receive federal funding.

Chapter 3

Comments:

Oversight reviewed the residential treatment agency tax credit application files for fiscal year 2007 through 2010 to determine whether DOS is complying with its policies and procedures. Although a small portion of the reviewed files appeared to be missing miscellaneous application information, all transactions appeared to follow DOS policies and procedures.

Oversight is unable to determine if the Residential Treatment Agency Tax Credit Program generates additional donations to local residential treatment agencies or simply gives taxpayers an additional break for donations that they would have made regardless. The program is considered one of several "Domestic and Social" programs offered by the state, along with Shelter for Victims of Domestic Violence, Special Needs Adoption, Youth Opportunities, etc. Oversight is unable to determine if the donations would not have been made to the residential treatment agencies if not but for the passage of this tax credit program. Therefore, Oversight is unable to determine if an intent of the program (generation of additional donations to local residential treatment agencies) has been achieved.

Recommendations:

Possible options available to the Missouri General Assembly include letting the program expire or extending the sunset of the program:

- First, the General Assembly could allow the program to expire in August, 2012 by taking no further action regarding this program. A possible negative impact of this action could be reduced donations to residential treatment agencies.
- Second, the General Assembly can extend the sunset up to an additional twelve years (roughly until August 2024).
- Third, the General Assembly could possibly extend the program for a period of time less than the stated twelve years.

If the Missouri General Assembly were to allow the Residential Treatment Agency Tax Credit to expire in 2012, taxpayers would still be allowed to make donations to residential treatment agencies of their choice.

At the December 15, 2011 Joint Committee on Legislative Research quarterly meeting a motion was adopted stating "that while the committee feels the information in the report is factually accurate, the committee believes that the debate on sunsets in general, including those credits in this report specifically, should be continued in the General Assembly at large and this motion does not recommend extension or termination of any tax credit contained herein."